

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4462 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GRAVITY INSTRUMENTS PVT LTD

Versus

INTERNATIONAL AIR PORTS AUTHORITY OF INDIA & ORS.

Appearance:

MR SP SEN for Petitioners
MR KAUSHAL THAKER for Respondent No. 2
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03-03-97

C.A.V. JUDGEMENT

1. Heard learned counsel for the parties.
2. The facts of the case, in brief, are that the petitioner no.1 is a company registered under the Companies Act, 1956, having its registered office at the address given in the Special Civil Application. The petitioner-company deals in manufacture of electronic

clocks. For the purpose of manufacturing electronic clocks, the petitioner-company felt it necessary to import necessary electronic components. The petitioner-company entered into a contract for the purchase of electronic micro motors which are electronic quartz clock components with M/s. Mabuchi Motor Co. Ltd. Kowloon, Hongkong. The sellers despatched the consignment containing the said materials from Tepai Taiwan to Ahmedabad vide AWB No. 057-64224996 dated 15th March, 1984 and Invoice No. B 4145 dated 21st March, 1984. The seller, as per the case of the petitioner, had booked the consignment by a flight belonging to respondent no.3, Air India, being A.F. 183 from Tepai to Bombay on 20th March, 1984. The petitioner says that according to the contract between the sellers and the petitioner no.1, the sellers were bound to supply material by 10th of March, 1984, and the petitioner was obliged to make inquiries regarding the supply and had even written a letter dated 9th March, 1984 to the suppliers inquiring as to whether they had despatched the goods or not, and they by a telegram dated 19th March, 1984 informed the petitioner-company that the said material was shipped by Air France from Tepai to Delhi-Bombay then to Ahmedabad. Thereafter the petitioners went on inquiring at the Ahmedabad Air Port about the arrival of the material, but the company was informed that the material was not received at Ahmedabad. The respondent no.2 by a letter dated 8th May, 1984, inquiring about the flight number and date pertaining to the petitioners' consignment. The petitioner was informed that the electronic goods were clearly reflected in the 'Nature and Quantity of Goods' column is forwarded to Ahmedabad for customs clearance. So the petitioner, remained as per the case of the petitioner, under the impression that the goods had still not arrived at Bombay. On inquiry from the respondent No.3 by a letter dated 27th April, 1984, the respondent No.3 vide letter dated 5th May, 1984, informed to the petitioner that the said consignment consigned to the petitioner-company had arrived by their flight No.AF 183 dated 20th March, 1984 and was deposited with the Bombay customs by their handling Agents M/s. Air India in accordance with the regulations of customs. It has further been informed that they are not responsible for the cargo being deposited with the local customs as these procedures are being followed by M/s. Air India for all carriers. It is not in dispute that M/s. Air Freight had written to the petitioner-company about the arrival of the consignment by their letter dated 22nd March, 1984. The petitioner has further come up with a case that the respondent No.3 Air France wrote to the Assistant

Collector of Customs, Cargo Complex, Sahar Road, Bombay informing him to forward the said consignment to Ahmedabad to the petitioner-company.

3. Under the letter dated 4th June, 1984, Air Freight Pvt. Ltd. informed to the petitioner that the consignment has arrived at Bombay and was in the custody of respondent No.1. It has been informed under the letter dated 4th June, 1984, that the petitioner-company was required to clear and/or receive consignment within seven days of the issue i.e. before 11th June, 1984. The petitioner approached to the Assistant Collector of Customs, Cargo Complex, Sahar Road, Bombay with a request to reship the consignment to Ahmedabad and permission to reship was given by the Assistant Collector of Customs. The petitioner wrote a letter to the Assistant Collector of Customs requesting him to issue necessary orders to Air India for transferring the consignment to Indian Air Lines to reship the same to Ahmedabad. What the petitioner complained is that despite of the aforesaid request, the consignment did not come to Ahmedabad and therefore, the petitioner inquired from respondents No.1 and 2 as to why the consignment is still not shipped to Bombay and why the delivery was not effected. The representative of the petitioner was informed by Air Cargo that Rs.26000/- were required to be paid as demurrage and unless demurrage is paid the respondents refused to deliver and/or despatch the material to Ahmedabad.

4. The grievance of the petitioners is that they are not under any obligation to pay any amount of demurrage. The consignment was shipped from Taiwan to Ahmedabad which was carried through Air France and Air India as an Agent of Air France was to take delivery of the said cargo at Bombay and to deliver the same to Ahmedabad to the petitioner-company. The cargo complex belongs to the respondent No.1 and the grievance of the petitioner is that the respondent no.1 has illegally detained the goods and material of the petitioner which resulted in irreparable loss to the petitioner.

5. The petitioner filed this Special Civil Application in which the grievance has been made that the respondents No.1 and 2 are duty bound to despatch the said goods from Bombay to Ahmedabad and to deliver the same to petitioner-company. The delivery as per the document of shipment of consignment has to be given to the petitioner at Ahmedabad, and as such, they were not under any obligation to pay the demurrage. The prayer has been made by the petitioner in this writ petition for

the direction to the respondents no.1 and 2 or any other respondents to despatch the said goods from Bombay to Ahmedabad Air Port and to effect the delivery of the same to the petitioner-company.

6. The respondent no.2 filed a counter affidavit and one of the preliminary objections has been taken that the statements and the allegations as made in the petition are mere contractual rights and obligations between the parties thereof and to this extent the petition is wholly misconceived inasmuch as the petitioner cannot invoke the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Further preliminary objection has been taken that various factual statements which are not admitted by respondent no.2, and therefore, necessarily requires evidence to be led, both oral and documentary as regards rights and claims of the petitioner with that of respondent no.2, and as such, the remedy of this Court under Article 226 of the Constitution of India is not a proper remedy. On merits also the claim of the petitioner has been contested.

7. The matter pertains to the delivery of consignment to the petitioner-company which is imported from Hongkong. The consignment was brought in India under the shipment papers by Air France, respondent no.3. The contention of the petitioner is that as per the letter of shipment, the consignment has to be delivered to the petitioner at Ahmedabad and not at Bombay. So the petitioner cannot be made liable for the demurrage charges as well as for the freight charges from Bombay to Ahmedabad. The claim of the petitioner follows from a contract in between the company on one hand, the petitioner herein, and the respondent no.2 and 3 on other. A person after entering into a contract taking into account its terms, cannot later on be allowed to assail validity of those terms. A person who enters into certain contractual obligations with his eyes open and works the entire contract, cannot be allowed to turn round, and question the validity of those obligations. The extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, which is of a discretionary nature and is exercised only to advance the interests of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in favour of the petitioner. It is a pure question of contractual obligations and in case the petitioner-company considers that the respondents No.2 and 3 have violated the terms of contract then the only remedy for the petitioner would have been to file a civil suit for the damages or for the enforcement of the contract. In the matter of

contractual obligations, remedy under Article 226 of the Constitution of India is not tenable. I find sufficient merits in the preliminary objection raised by the respondent no.2 in the reply. Apart from this, there are many question of facts which are in dispute between the parties, which are required to be gone into before any relief can be granted to the petitioner under Article 226 of the Constitution of India in this Special Civil Application. It is settled law that this court will decline to exercise its extraordinary, discretionary jurisdiction under Article 226 where disputed question of facts have arisen in the Special Civil Application. This preliminary objection raised by respondent no.2 equally deserves to be accepted.

8. So on both the counts, that the dispute raised by the petitioner in this Special Civil Application arises out of a contractual obligation, and secondly there are serious disputed question of facts involved in this case, this petition is not maintainable.

9. It is useful to make reference to the decision of the Hon'ble Supreme Court in the case of Rajendra Singh vs. State of M.P. and others reported in 1996 (5) SCC 460. In para no.6 of the decision, the Hon'ble Supreme Court has observed:

6. It has been held by a Constitution Bench of this Court in *Har Shankar v. Dy. Excise and Taxation Commr.* that:

"[T]he writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred."

At the same time, it was observed that the licensees are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted

in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of the public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the court should enquire - in whose interest is the provision conceived. If it is not conceived in the interest of the public, question of waiver and/or acquiescence may arise - subject, of course, to the pleadings of the parties. The aspect has been dealt with elaborately by this Court in State Bank of Patiala v. S.K. Sharma and in Krishan Lal v State of J&K on the basis of a large number of decisions on the subject. Though the said decisions were rendered with reference to the statutory rules and statutory provisions (besides the principles of natural justice) governing the disciplinary enquiries involving government servants and employees of statutory corporations, the principles adumbrated therein are of general application. It is necessary to keep these considerations in mind while deciding whether any interference is called for by the court - whether under Article 226 or in a suit. The function of the court is not a mechanical one. It is always a considered course of action.

10. Taking into consideration the totality of the facts of this case, this writ petition is wholly misconceived and the same is dismissed. Rule discharged.

zgs/-